



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
Before the Board of Patent Appeals and Interferences

Re Patent Application of

TIGHE et al

Atty. Ref.: 540-204

Serial No. 09/582,760

Group: 3644

Filed: June 30, 2000

Examiner: G. Barefoot

For: AIRCRAFT STRUCTURE FATIGUE ALLEVIATION

* * * * *

January 31, 2003

Assistant Commissioner for Patents
Washington, DC 20231

Sir:

SUPPLEMENTAL REPLY BRIEF

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This Supplemental Reply Brief is responsive to the Supplemental Examiner's Answer mailed January 2, 2003 (Paper No. 15).

The Supplemental Examiner's Answer suggests that appellant ignores "the level of ordinary skill" established by the cited prior art references. Appellants have not contested the level of ordinary skill.

Appellants' Reply Brief previously pointed out that the Examiner has not indicated how or where any reference of record has disclosed four structures which are positively recited in appellants' independent claims (see Reply Brief page 1, second full paragraph). The Supplemental Examiner's Answer provides no more indication of where these structures are to be found in any cited prior art reference than does the original Examiner's Answer or the previous Official Action. The fact is that the cited prior art

does not teach these positively recited structures and thus clearly evidences a failure to establish a *prima facie* case of obviousness.

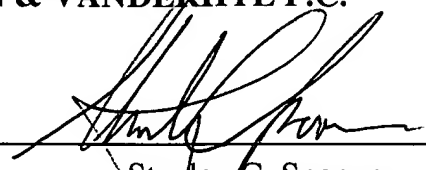
The Examiner appears to suggest that "the level of ordinary skill" is a substitution for the Federal Circuit requirement of "reasons" or "motivation" for combining references. Neither in the Examiner's Answer nor in the Supplemental Examiner's Answer does the Examiner consider the requirement of a "reason" or "motivation" as required in the Court of Appeals for the Federal Circuit decisions cited on page 9 of appellants' Appeal Brief. The Examiner's repeated failure to meet the Court's test requirement for combining references (which appellants suggest is distinct from "the level of ordinary skill") is further evidence of the untenable nature of the Examiner's rejection.

In view of the fact that the Examiner has not cured the defects noted in appellants' Appeal Brief nor the defects reiterated in appellants' Reply Brief, it is submitted that the rejection of claims 1-10 over the cited prior art is clearly in error and reversal thereof by this Honorable Board is respectfully requested.

Respectfully submitted,

NIXON & VANDERHYE P.C.

By: _____



Stanley C. Spooner

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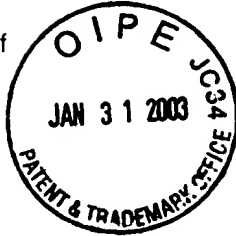
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Sir:

☒ Correspondence Address Indication Form Attached.

☐ **NOTICE OF APPEAL**

Applicant hereby appeals to the Board of Appeals from the decision dated _____
of the Examiner twice/finally
rejecting claims _____ (\$ _____)

\$

☐ An appeal **BRIEF** is attached in triplicate in the pending appeal of the
above-identified application (\$ 320.00)

\$

☐ Credit for fees paid in prior appeal without decision on merits

-\$ (_____)

☒ A Supplemental reply brief is attached in triplicate under Rule 193(b)

(no fee)

☐ Petition is hereby made to extend the current due date so as to cover the filing date of this
paper and attachment(s) (\$110.00/1 month; \$410.00/2 months; \$930.00/3 months; \$1450.00/4 months)

\$

SUBTOTAL \$ 0.00

☐ Applicant claims "Small entity" status, enter 1/2 of subtotal and subtract

-\$ (_____)

☐ "Small entity" statement attached.

SUBTOTAL \$ 0.00

Less _____ month extension previously paid on

-\$ (0.00)

TOTAL FEE ENCLOSED \$ 0.00

Any future submission requiring an extension of time is hereby stated to include a petition for such time extension. The Commissioner is hereby authorized to charge any deficiency, or credit any overpayment, in the fee(s) filed, or asserted to be filed, or which should have been filed herewith (or with any paper hereafter filed in this application by this firm) to our **Account No. 14-1140**. A duplicate copy of this sheet is attached.

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By Atty: Stanley C. Spooner, Reg. No. 27,393

Signature: _____